19 51. **File No.** O. Motor Tax 51

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Bombay Motor Vehicles Tax Act 1935

D. 5/51

File No. O. Motor Tax 51

449-A

C O N T E N T S.

Legal Department File No. O. Meter Tax/1951.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Meter Vehicles Tax Act, 1935.	
1	4731 / 24.5.51	Question whether (1) amendment of rule 9 of the Bombay Meter Vehicles Tax Rules, 1940, by addition of the following para (2) would be legally feasible :- "The Registering Authority may withhold tax token in respect of a transport vehicle if the certificate of fitness of that vehicle has expired until a valid certificate of fitness is produced.	1-2
2	2971 / 16.2.51.	Question whether in order to enable the R.T.Os. to grant refunds of meter vehicles tax paid in respect of meter vehicles used in the various merged areas before merger, it is necessary to amend the Act.	3-4
3	3908 / 8.3.51.	Sec. 9. Question of giving the benefit of compensation to Sawantwadi Municipality as and other like Municipalities although they may not be entitled to such benefit under Sec. 9 as it stands at present.	5-6
4	7339 / 9-5-51	Sec. 3(2). Question whether the recovery of arrears which exceeds the amount of the annual tax payable under the revised Notification would be in order.	7-8
5.	10311 / 28-6-51.	Sec. 3(1) Tax on Auto.Rikshaws.	9-10

BKS. 22/6/ 50.

22/6

K.S.R.

22/6

Sub-section (3) of section 3 of the Bombay Motor Vehicles Tax Act, 1935, provides that when the tax leviable under that section in respect of any motor vehicle has been paid, the registering authority shall issue to the person paying the tax a token in the prescribed form showing that such tax has been paid. Rule 9 of the Bombay Motor Vehicles Tax Rules, 1940, has been made for the purpose of sub-section (3) of section 3 of the Act. That rule requires the registering authority to satisfy itself that the correct amount of the tax has been paid before issuing a token in Form CT appended to the Rules. It appears from the State Transport Officer's letter at page 1 ante that the practice of his office is to hold over the issue of the tax token in respect of a transport vehicle if it is observed that the certificate of fitness of that vehicle has expired. Certificates of fitness are required to be carried by transport vehicles under section 38(1) of the Motor Vehicles Act, 1939. As stated above, the tax token is required to be issued under sub-section (3) of section 3 of the Bombay Motor Vehicles Tax Act, 1935, to show that the tax due in respect of a vehicle has been fully paid. It has nothing to do with the fitness of the vehicle. To add a rule as proposed by the State Transport Officer empowering the Registering Authority to withhold the tax token until a valid certificate of fitness is produced by the owner would be beyond the scope of the Bombay Motor Vehicles Tax Act, 1935. It would not, therefore, be feasible to amend rule 9 as proposed by the State Transport Officer.

Id/-
Additional Secretary to Government.

U.R. to H.D. No. 4731 , dated the 24th March 1951.

BKS. 21/6/ 4o.

Legal Department.

The question raised for consideration is whether in order to enable the Regional Transport Officers to grant refunds of motor vehicles tax paid in respect of motor vehicles used in the various merged areas before merger, it is necessary to amend the Bombay Motor Vehicles Tax Act, 1935.

2. The State Transport Officer seems to have based his xx view that a provision will have to be inserted in the Bombay Motor Vehicles Tax Act,1935 (p. 5 ante) on the ground that the tax paid had been levied under the various State laws and not under the Bombay Act. But this view does not appear to be correct. By the various Application of Laws Orders, the provisions of the Bombay Act had been extended to the merged areas and the corresponding State Laws repealed. The effect of that application will be that the tax paid in respect of motor vehicles used in the merged areas will now be deemed to have been paid under the Bombay Act; and the definition of 'tax' in section 2(12) of the Bombay Act that 'tax' means a tax imposed under that Act will apply. For the purposes of claims of refunds therefore the tax will have to be considered as one recovered under the Bombay Act. The provisions about refund in the Bombay Act will therefore be attracted in considering claims of refund in respect of such payments. No amendment of the Bombay Motor Vehicles Tax Act,1935, appears to be necessary as proposed by the State Transport Officer. If however any case is not covered by the existing provisions of the Act, it will be necessary to consider whether an amendment of this Act or executive orders are necessary.

Id/-J.R.D. 15/2
Additional Secretary to Government.

U.R. to H.D. No. 2971 dated the 16th February 1951.

BKB. 22/6/ 4c.

Legal Department.

As pointed out in R.L.A.'s opinion No. 2496, dated the 4th March 1949, the case of the Sawantwadi municipality stands on a peculiar footing. The Bombay Motor Vehicles Tax Act, 1935, was applied to the Sawantwadi State area on its merger with effect from 28th July 1948. 28th July 1948 was, therefore, the date of the commencement of the Act in the Sawantwadi State, but at that date the Sawantwadi municipality was not levying any tolls on motor vehicles or animals. It appears that before merger, the Sawantwadi Darbar, by its notification of 30th March 1946, applied the Bombay Motor Vehicles Tax Act to the State after omitting therefrom section 9. The effect of this was that the municipality was prohibited since 30th March 1946 from levying tax on motor vehicles and was at the same time deprived of the annual contribution provided for in section 9. If the intention of Government is to pay annual contribution to the Sawantwadi municipality and other municipalities in the merged States, who are similarly circumstanced, it will be necessary for Government to ascertain the names of all such municipalities before undertaking any amendment of the Act. It will be also necessary for Government to consider the question of computing the compensation to be paid to the municipalities. As pointed out by the R.L.A. in the opinion referred to, the question of fixing the period for computing the compensation under the concluding part of section 9 would not arise in the case of such municipalities.

Id/-J.R.D.
27/2
Secretary to Government.

U.R. to L.S.G. & .H.D. No. 3908 ,dated the 8th March 1951.

BKS. 22/6/ 4c.

LEGAL DEPARTMENT.

The Bombay Motor Vehicles Tax Act, 1935: sec.3(2).

The tax in this case is due in respect of the period of 12 months from the 1st April 1950 to 31st March 1951. It appears that the Government by notification has prescribed the enhanced rates of Rs. 640 and Rs. 170 annually and quarterly respectively for the class of vehicles in question with effect from 1st June 1950. In the circumstances, it will be correct to asses the tax for the first two months i.e. April and May 1950, at the old rates and for the next 10 months at the new rates and calculated in accordance with the provisions of sub-section (2) of section 3 of the Bombay Motor Vehicles Tax, Act, 1935. Under that sub-section tax paid quarterly or for periods less than a quarter are subject to an addition of 6¼ per cent. No doubt the tax calculated in this manner for 12 months (from 1st April 1950 to 31st March 1951) exceeds, in spite of the fact that there was a reduced rate prevalent during the first 2 months, even the enhanced rate for a full year. However , that will not make the levy illegal. It will, however, be fairer and advantageous to the owner of the vehicle to assess the tax for the first two months at the old rate and then for the whole year from 1st June 1950 to 31st May 1951 subject to the condition, of course, that the vehicle is in use even after the 31st March 1951.

Id/-
Additional Secretary to Government.

U.R. to H.D.No. 7339 dated the 9th May 1951.

BKS. 22/6/ 4c.

Legal Department.

Tax on Ante-Rikshaws

Bombay Motor Vehicles Tax Act, 1935

S. 3(1)

The view taken by Secretary, Home Department, is correct. Prior to the issue of Government Notification, Home Department, No. 56/6, dated the 1st June 1950, the tax was leviable according to the rates prescribed in Government Notification, Revenue Department, No.2544/39-III dated the 2nd May 1940 (page 907 Bombay Rules and Orders, Vol. I). Under that notification a fee of Rs. 120/- was leviable in respect of motor vehicles licensed to carry in all not more than 4 persons plying for hire and used for the transport of passengers (vide entry A. IV(a) at page 908). Rikshaws obviously fell in that category of motor vehicles and consequently recovery at the rate of Rs. 120/- was legally justified.

Id/-
Additional Secretary to Government.

U.R. to H.D. No. 10311 ,dated the 28th June 1951.

BKS. 22/6/ 4c.